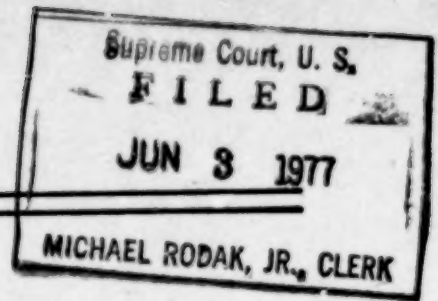


**APPENDIX**



**Supreme Court of the United States**

**OCTOBER TERM, 1976**

**No. 76-5856**

**WINSTON M. HOLLOWAY, ET AL.**

*Petitioners,*

**—v.—**

**STATE OF ARKANSAS,**

*Respondent.*

**ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ARKANSAS**

**PETITION FOR CERTIORARI FILED DECEMBER 13, 1976  
CERTIORARI GRANTED APRIL 18, 1977**

# Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-5856

WINSTON M. HOLLOWAY, ET AL.

*Petitioners,*

—v.—

STATE OF ARKANSAS,

*Respondent.*

ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ARKANSAS

## INDEX

	Page
Chronological List of Relevant Docket Entries .....	1
Felony Information (Robbery) Filed July 29, 1975 .....	3
Felony Information (Rape) Filed July 29, 1975 .....	5
Felony Information (Rape) Filed July 29, 1975 .....	6
Defendant Holloway's Motion for Severance—Filed August 8, 1975 .....	7
Defendant Welch's Motion for Severance—Filed August 8, 1975 .....	8
Defendant Campbell's Motion for Severance—Filed August 8, 1975 .....	9
Defendants' Motion for Separate Counsel—Filed August 13, 1975 .....	10
Order Denying Defendants' Motion for Severance and Separate Counsel—Filed August 19, 1975 .....	11
Judgment on Holloway (Robbery) Filed Sept. 5, 1975 .....	12
Judgment on Holloway (Rape) Filed Sept. 5, 1975 .....	13
Judgment on Holloway (Rape) Filed Sept. 5, 1975 .....	14
Judgment on Welch (Robbery) Filed Sept. 5, 1975 .....	15
Judgment on Welch (Rape) Filed 5, 1975 .....	16

	Page
Judgment on Welch (Rape) Filed Sept. 5, 1975 .....	17
Judgment on Campbell (Rape) Filed Sept. 5, 1975 .....	18
Judgment on Campbell (Robbery) Filed Sept. 5, 1975 .....	19
Judgment on Campbell (Rape) Filed Sept. 5, 1975 .....	20
Notice of Appeal—Filed Sept. 8, 1975 .....	21
Transcript of Proceedings:	
Testimony of Kenneth Holloway, Witness on Behalf of Defendants—	
Direct Examination .....	24
Testimony of Defendant Winston M. Holloway, Witness on Behalf of Defendant—	
Direct Examination .....	26
Cross Examination .....	27
Testimony of Defendant Ray Lee Welch, Witness on Behalf of Defendant—	
Direct Examination .....	29
Cross Examination .....	30
Testimony of Defendant Gary Don Campbell, Witness on Behalf of Defendant—	
Direct Examination .....	31
Cross Examination .....	32
Opinion of Arkansas Supreme Court—Filed July 19, 1976.... (Pet. App. A) .....	33
Judgment of Arkansas Supreme Court—Filed Sept. 20, 1976....(Pet. App. C) .....	33
Order of the Supreme Court of the United States Granting Motion for Leave to Proceed in forma pauperis and Granting Petition for Writ of Certiorari .....	34

IN THE CIRCUIT COURT OF  
PULASKI COUNTY, ARKANSAS

CHRONOLOGICAL LIST OF  
RELEVANT DOCKET ENTRIES

- July 29, 1975 Felony Information filed charging Winston Holloway, Ray Lee Welch and Gary Don Campbell with Robbery (R. 1-2).
- July 29, 1975 Felony Information filed charging Winston Holloway, Ray Lee Welch and Gary Don Campbell with Rape First Degree (R. 6-7).
- July 29, 1975 Felony Information filed charging Winston Holloway, Ray Lee Welch and Gary Don Campbell with Rape First Degree (R. 11-12).
- Aug. 5, 1975 The defendants appeared in court with their court-appointed attorney, the Public Defender, and entered pleas of not guilty (R. 17).
- Aug. 7, 1975 The cases were set for a jury trial on September 4 and 5, 1975 (R. 22).
- Aug. 8, 1975 A Motion for Severance was filed on behalf of each defendant (R. 23-29).
- Aug. 13, 1975 A Motion for appointment of separate counsel due to a possibility of a conflict of interest was filed (R. 31).
- Aug. 19, 1975 After a hearing the Court denied the defendants Motion for Severance and Motion for separate counsel (R. 32).
- Sept. 5, 1975 The jury returned a verdict of guilty on each count and sentenced each defendant to a life sentence on each count of Rape in the First Degree and to twenty-one years on the Robbery (R. 38-39).
- Sept. 5, 1975 Judgment was entered against Winston M. Holloway and his punishment was fixed at two Life sentences and one 21 year sentence (R. 40-42).

Sept. 5, 1975 Judgment was entered against Ray Lee Welch and his punishment was fixed at two Life sentences and one 21 year sentence (R. 43-45).

Sept. 5, 1975 Judgment was entered against Gary Don Campbell and his punishment was fixed at two Life sentences and one 21 year sentence (R. 46-47).

Sept. 8, 1975 Notice of Appeal to the Supreme Court of Arkansas was filed on behalf of each defendant (R. 69).

IN THE PULASKI CIRCUIT COURT  
FIRST DIVISION

No. CR75-1090

STATE OF ARKANSAS, PLAINTIFF

*vs.*

WINSTON M. HOLLOWAY, RAY LEE WELCH,  
GARY DON CAMPBELL, DEFENDANTS

FELONY INFORMATION

Filed July 29, 1975

[R. 1] Lee A. Munson, Prosecuting Attorney of the Sixth Judicial District of Arkansas, in the name, by the authority, and on behalf of the State of Arkansas Charges WINSTON M. HOLLOWAY, RAY LEE WELCH AND GARY DON CAMPBELL with the crime of violating Ark. Stat. Ann. § 41-3601, ROBBERY, committed as follows, to-wit: the said defendant(s), in Pulaski County, Arkansas, on or about the 1st day of June, 1975, did unlawfully, feloniously, wilfully, maliciously and violently from the person of David Carroll, agent of the Leather Bottle, and against his will, by putting him, David Carroll, in fear, take, steal and carry away money and property, said money and property being then and there the property of him, David Carroll, agent of the Leather Bottle, against the peace and dignity of the State of Arkansas.

WINSTON M. HOLLOWAY, RAY LEE WELCH AND GARY DON CAMPBELL committed the above felony using a firearm, and consequently their sentences should be enhanced as provided for in Ark. Stat. Ann. § 43-2336 to § 43-2338.

WINSTON M. HOLLOWAY has previously been convicted of at least three felonies and GARY DON CAMPBELL has previously been convicted of at least one



felony; consequently their sentences should be increased as provided for in Ark. Stat. Ann. § 43-2328, against the peace and dignity of the State of Arkansas.

(certificate omitted in printing)

\* \* \* \*

IN THE PULASKI CIRCUIT COURT  
FIRST DIVISION

No. CR75-1092

STATE OF ARKANSAS, PLAINTIFF

vs.

WINSTON M. HOLLOWAY, RAY LEE WELCH,  
GARY DON CAMPBELL, DEFENDANTS

FELONY INFORMATION

Filed July 29, 1975

[R. 6] Lee A. Munson, Prosecuting Attorney of the Sixth Judicial District of Arkansas, in the name, by the authority, and on behalf of the State of Arkansas Charges WINSTON M. HOLLOWAY, RAY LEE WELCH AND GARY DON CAMPBELL, with the crime of violating Ark. Stat. Ann. § 41-4301, RAPE FIRST DEGREE committed as follows, to-wit: The said defendant(s), in Pulaski County, Arkansas, on or about the 1st day of June, 1975, did unlawfully, feloniously, engaged in sexual intercourse with a female, Robin Rice, by forcible compulsion, against the peace and dignity of the State of Arkansas.

WINSTON M. HOLLOWAY, RAY LEE WELCH AND GARY DON CAMPBELL committed the above felony using a firearm, and consequently their sentences should be enhanced as provided for in Ark. Stat. Ann. § 43-2336 to § 43-2338.

WINSTON M. HOLLOWAY has previously been convicted of at least three felonies and GARY DON CAMPBELL has previously been convicted of at least one felony; consequently their sentences should be increased as provided for in Ark. Stat. Ann. § 43-2328, against the peace and dignity of the State of Arkansas.

(certificate omitted in printing)

\* \* \* \*

IN THE PULASKI CIRCUIT COURT  
FIRST DIVISION

No. CR75-1094

STATE OF ARKANSAS, PLAINTIFF

*vs.*

WINSTON M. HOLLOWAY, RAY LEE WELCH,  
GARY DON CAMPBELL, DEFENDANTS

FELONY INFORMATION

Filed July 29, 1975

[R. 11] Lee A. Munson, Prosecuting Attorney of the Sixth Judicial District of Arkansas, in the name, by the authority, and on behalf of the State of Arkansas, Charges WINSTON M. HOLLOWAY, RAY LEE WELCH and GARY DON CAMPBELL with the crime of violating Ark. Stat. Ann. § 41-4301, RAPE FIRST DEGREE, committed as follows, to-wit: The said defendants, in Pulaski County, Arkansas, on or about the 1st day of June, 1975, did unlawfully, feloniously, engage in sexual intercourse with a female, Mary McKinney, by forcible compulsion, against the peace and dignity of the State of Arkansas.

WINSTON M. HOLLOWAY, RAY LEE WELCH and GARY DON CAMPBELL committed the above felony using a firearm, and consequently their sentences should be enhanced as provided for in Ark. Stat. Ann. § 43-2336 and § 43-2328.

WINSTON M. HOLLOWAY has previously been convicted of at least three felonies and GARY DON CAMPBELL has previously been convicted of at least one felony; consequently their sentences should be increased as provided for in Ark. Stat. Ann. § 43-2328, against the peace and dignity of the State of Arkansas.

(certificate omitted in printing)

\* \* \*

IN THE PULASKI CIRCUIT COURT  
FIRST DIVISION

No. CR75-1090, 2, 4

STATE OF ARKANSAS, PLAINTIFF

*vs.*

WINSTON M. HOLLOWAY, RAY LEE WELCH,  
GARY DON CAMPBELL, DEFENDANTS

DEFENDANT WINSTON M. HOLLOWAY'S  
MOTION FOR SEVERANCE

Filed August 8, 1975

[R. 24] Comes your Petitioner, Winston M. Holloway, and files this, his Motion for Severance of defendants, and files this his Motion for a separate trial of defendant, Winston M. Holloway, and as a basis for the relief herein requested, states:

1. That due to the nature of the offense witnesses may be called to testify against other defendants of which said testimony would have no connection or bearing on petitioner's case but implications could prove harmful to said petitioner.

2. That a joint trial would deprive him of his right to call his co-defendants as witnesses.

3. Should any of the co-defendants fail to testify and if the attorney's duty to one of the other co-defendants should require him to draw the jury's attention to the possible inference of guilty from such silence, then this defendant would suffer irreparable injury because of such joinder.

(certificate omitted in printing)

\* \* \*

IN THE PULASKI CIRCUIT COURT  
FIRST DIVISION

No. CR75-1090, 2, 4

STATE OF ARKANSAS, PLAINTIFF

vs.

WINSTON M. HOLLOWAY, RAY LEE WELCH,  
GARY DON CAMPBELL, DEFENDANTS

DEFENDANT RAY LEE WELCH'S  
MOTION FOR SEVERANCE

Filed August 8, 1975

[R. 26] Comes your Petitioner, Ray Lee Welch, and files this, his Motion for Severance of defendants, and files this his Motion for a separate trial of defendant, Ray Lee Welch, and as a basis for the relief herein requested, states:

1. That due to the nature of the offense witnesses may be called to testify against other defendants of which said testimony would have no connection or bearing on petitioner's case but implications could prove harmful to said petitioner.

2. That a joint trial would deprive him of his right to call his co-defendants as witnesses.

3. Should any of the co-defendants fail to testify and if the attorney's duty to one of the other co-defendants should require him to draw the jury's attention to the possible inference of guilty from silence, then this defendant would suffer irreparable injury because of such joinder.

WHEREFORE, premises considered, your petitioner prays that this Court grant him a severance under Ark. Stat. Ann. § 43-1802 and that he be granted a separate trial.

(certificate omitted in printing)

\* \* \* \*

IN THE PULASKI CIRCUIT COURT  
FIRST DIVISION

No. CR75-1090, 2, 4

STATE OF ARKANSAS, PLAINTIFF

vs.

WINSTON M. HOLLOWAY, RAY LEE WELCH,  
GARY DON CAMPBELL, DEFENDANTS

DEFENDANT GARY DON CAMPBELL'S  
MOTION FOR SEVERANCE

Filed August 8, 1975

[R. 28] Comes your Petitioner, Gary Don Campbell, and files this, his Motion for Severance of defendants, and files this, his Motion for a separate trial of defendant, Gary Don Campbell, and as a basis for the relief herein requested, states:

1. That due to the nature of the offense witnesses may be called to testify against other defendants of which said testimony would have no connection or bearing on petitioner's case but implications could prove harmful to said petitioner.

2. That a joint trial would deprive him of his right to call his co-defendants as witnesses.

3. Should any of the co-defendants fail to testify and if the attorney's duty to one of the other co-defendants should require him to draw the jury's attention to the possible inference of guilty from such silence, then this defendant would suffer irreparable injury because of such joinder.

WHEREFORE, premises considered, your petitioner prays that this Court grant him a severance under Ark. Stat. Ann. § 43-1802 and that he be granted a separate trial.

(certificate omitted in printing)

\* \* \* \*



IN THE PULASKI CIRCUIT COURT  
FIRST DIVISION

No. CR75-1090, 2, 4

STATE OF ARKANSAS, PLAINTIFF

*vs.*

WINSTON M. HOLLOWAY, RAY LEE WELCH,  
GARY DON CAMPBELL, DEFENDANTS

DEFENDANTS' MOTION FOR  
SEPARATE COUNSEL

Filed August 13, 1975

[R. 31] Comes Harold L. Hall, Public Defender, Sixth Judicial District, and states to the Court that he was appointed to represent the above named defendants on August 5, 1975, in a case which has been set for a Jury Trial on September 4 and 5, 1975. That the defendants have stated to him that there is a possibility of a conflict of interest in each of their cases and have asked him to request the Court to appoint separate counsel for each defendant.

WHEREFORE, defendants pray that separate counsel be appointed for each of them due to the possibility of a conflict of interest in each of their cases.

\* \* \* \*

IN THE PULASKI CIRCUIT COURT  
FIRST DIVISION

No. CR75-1090, 2, 4

STATE OF ARKANSAS, PLAINTIFF

*vs.*

WINSTON M. HOLLOWAY, RAY LEE WELCH,  
GARY DON CAMPBELL, DEFENDANTS

ORDER DENYING DEFENDANTS' MOTION FOR  
SEVERANCE AND SEPARATE COUNSEL

Filed August 19, 1975

[R. 32] This day comes the State of Arkansas by Lee Munson, Prosecuting Attorney, and come the defendants in proper person and by their attorney, Harold L. Hall, Public Defender, and a hearing is had on defendants' Motion for Severance and Motion for Separate Counsel, and said motions are hereby denied.

\* \* \* \*



IN THE PULASKI CIRCUIT COURT  
FIRST DIVISION

CR-75-1090

STATE OF ARKANSAS, PLAINTIFF

vs.

WINSTON M. HOLLOWAY, DEFENDANT

ROBBERY

JUDGMENT (WINSTON M. HOLLOWAY)

Filed September 5, 1975

[R. 40] This day comes the State of Arkansas by Lee A. Munson, Prosecuting Attorney, and comes the defendant in proper person in custody of the Sheriff and by his Attorney, Harold L. Hall, Public Defender, appointed by the Court, and the Jury having returned a verdict of Guilty with punishment fixed at Twenty-one (21) years imprisonment in the State Penitentiary, the Court doth this date sentence and commit defendant to Twenty-one (21) years imprisonment in the State Penitentiary as recommended by the Jury.

\* \* \* \*

IN THE PULASKI CIRCUIT COURT  
FIRST DIVISION

CR75-1092

STATE OF ARKANSAS, PLAINTIFF

vs.

WINSTON M. HOLLOWAY, DEFENDANT

RAPE IN THE FIRST DEGREE

JUDGMENT (WINSTON M. HOLLOWAY)

Filed September 5, 1975

[R. 41] This day comes the State of Arkansas by Lee A. Munson, Prosecuting Attorney, and comes the defendant in proper person in custody of the Sheriff and by his Attorney, Harold L. Hall, Public Defender, appointed by the Court, and the Jury having returned a verdict of Guilty with punishment fixed at Life imprisonment in the State Penitentiary, the Court doth this date sentence and commit defendant to Life imprisonment in the State Penitentiary as recommended by the Jury.

\* \* \* \*

IN THE PULASKI CIRCUIT COURT  
FIRST DIVISION

CR75-1094

STATE OF ARKANSAS, PLAINTIFF

vs.

WINSTON M. HOLLOWAY, DEFENDANT

RAPE IN THE FIRST DEGREE

JUDGMENT (WINSTON M. HOLLOWAY)

Filed September 5, 1975

[R. 42] This day comes the State of Arkansas by Lee A. Munson, Prosecuting Attorney, and comes the defendant in proper person in custody of the Sheriff and by his Attorney, Harold L. Hall, Public Defender, appointed by the Court, and the Jury having returned a verdict of Guilty with punishment fixed at Life imprisonment in the State Penitentiary, the Court doth this date sentence and commit defendant to Life imprisonment in the State Penitentiary as recommended by the Jury.

• • • •

IN THE PULASKI CIRCUIT COURT  
FIRST DIVISION

CR75-1090

STATE OF ARKANSAS, PLAINTIFF

vs.

RAY LEE WELCH, DEFENDANT

ROBBERY

JUDGMENT (RAY LEE WELCH)

Filed September 5, 1975

[R. 43] This day comes the State of Arkansas by Lee A. Munson, Prosecuting Attorney, and comes the defendant in proper person in custody of the Sheriff and by his Attorney, Harold L. Hall, Public Defender, appointed by the Court, and the Jury having returned a verdict of Guilty with punishment fixed at Twenty-one (21) years imprisonment in the State Penitentiary, the Court doth this date sentence and commit defendant to Twenty-one (21) years imprisonment in the State Penitentiary, as recommended by the Jury.

• • • •

IN THE PULASKI CIRCUIT COURT  
FIRST DIVISION

CR75-1092

STATE OF ARKANSAS, PLAINTIFF

vs.

RAY LEE WELCH, DEFENDANT

RAPE IN THE FIRST DEGREE

JUDGMENT (RAY LEE WELCH)

Filed September 5, 1975

[R. 44] This day comes the State of Arkansas by Lee A. Munson, Prosecuting Attorney, and comes the Defendant in proper person in custody of the Sheriff and by his Attorney, Harold L. Hall, Public Defender, appointed by the Court, and the Jury having returned a verdict of Guilty with punishment fixed at Life imprisonment in the State Penitentiary, the Court doth this date sentence and commit defendant to Life imprisonment in the State Penitentiary as recommended by the Jury.

\* \* \* \*

IN THE PULASKI CIRCUIT COURT  
FIRST DIVISION

CR75-1094

STATE OF ARKANSAS, PLAINTIFF

vs.

RAY LEE WELCH, DEFENDANT

RAPE IN THE FIRST DEGREE

JUDGMENT (RAY LEE WELCH)

Filed September 5, 1975

[R. 45] This day comes the State of Arkansas by Lee A. Munson, Prosecuting Attorney, and comes the defendant in proper person in custody of the Sheriff and by his Attorney, Harold L. Hall, Public Defender, appointed by the Court, and the Jury having returned a verdict of Guilty with punishment fixed at Life imprisonment in the State Penitentiary, the Court doth this date sentence and commit defendant to Life imprisonment in the State Penitentiary as recommended by the Jury.

\* \* \* \*

IN THE PULASKI CIRCUIT COURT  
FIRST DIVISION

CR75-1094

STATE OF ARKANSAS, PLAINTIFF

vs.

GARY DON CAMPBELL, DEFENDANT

RAPE IN THE FIRST DEGREE

JUDGMENT (GARY DON CAMPBELL)

Filed September 5, 1975

[R. 46] This day comes the State of Arkansas by Lee A. Munson, Prosecuting Attorney, and comes the defendant in proper person in custody of the Sheriff and by his Attorney, Harold L. Hall, Public Defender, appointed by the Court, and the Jury having returned a verdict of Guilty with punishment fixed at Life imprisonment in the State Penitentiary, the Court doth this date sentence and commit defendant to Life imprisonment in the State Penitentiary as recommended by the Jury.

• • • •

IN THE PULASKI CIRCUIT COURT  
FIRST DIVISION

CR75-1090

STATE OF ARKANSAS, PLAINTIFF

vs.

GARY DON CAMPBELL, DEFENDANT

ROBBERY

JUDGMENT (GARY DON CAMPBELL)

Filed September 5, 1975

[R. 47] This day comes the State of Arkansas by Lee A. Munson, Prosecuting Attorney, and comes the defendant in proper person and by his Attorney, Harold L. Hall, Public Defender, appointed by the Court, and the Jury having returned a verdict of Guilty with punishment fixed at Twenty-one (21) years imprisonment in the State Penitentiary, the Court doth this date sentence and commit defendant to Twenty-one (21) years imprisonment in the State Penitentiary as recommended by the Jury.

• • • •



IN THE PULASKI CIRCUIT COURT  
FIRST DIVISION

CR75-1092

STATE OF ARKANSAS, PLAINTIFF

*vs.*

GARY DON CAMPBELL, DEFENDANT

RAPE FIRST DEGREE

JUDGMENT (GARY DON CAMPBELL)

Filed September 5, 1975

[R. 48] This day comes the State of Arkansas by Lee A. Munson, Prosecuting Attorney, and comes the Defendant in proper person in custody of the Sheriff and by his Attorney, Harold L. Hall, Public Defender, appointed by the Court, and the Jury having returned a verdict of Guilty with punishment fixed at Life imprisonment in the State Penitentiary, the Court doth this date sentence and commit defendant to Life imprisonment in the State Penitentiary as recommended by the Jury.

• • • •

IN THE PULASKI CIRCUIT COURT  
FIRST DIVISION

No. CR75-1090, 2, 4

STATE OF ARKANSAS, PLAINTIFF

*vs.*

WINSTON M. HOLLOWAY, RAY LEE WELCH,  
GARY DON CAMPBELL, DEFENDANTS

NOTICE OF APPEAL

Filed September 8, 1975

[R. 69] Come the defendants, Winston M. Holloway, Ray Lee Welch, and Gary Don Campbell, and pray an appeal to the Supreme Court of Arkansas from the judgment and sentence of this Court rendered on September 5, 1975, and designate the entire record as their record of appeal in this case.

(certificate omitted in printing)

TRANSCRIPT OF PROCEEDINGS  
EXCERPTS FROM ORAL MOTION

[121] Mr. Hall: I have one other motion. Previously, I had filed a Motion and asked the Court to appoint separate attorneys for each defendant. The Court: Yes, Sir, and I refused to do it.

Mr. Hall: At this time I would like to renew that Motion on the grounds that one or two of the defendants may testify and, if they do, then I will not be able to cross-examine them because I have received confidential information from them. The Court: I don't know why you wouldn't. Overruled. Save your exceptions.

\* \* \*

[237] Mr. Hall: If the Court please, I talked to my clients, the three defendants, this morning. I have received information from all three of them that they wish to testify. The Court: And you have advised them of their rights that they don't have to testify.

Mr. Hall: I have advised them of their rights, that they have a right to testify or not to testify in their own behalf. Now, since I have been appointed, I had previously filed a motion asking the Court to appoint a separate attorney for [238] each defendant because of a possible conflict of interest. This conflict will probably be now coming up since each one of them wants to testify. The Court: That's all right; let them testify. There is no conflict of interest. Every time I try more than one person in this Court each one blames it on the other one.

Mr. Hall: I have talked to each one of these defendants, and I have talked to them individually, not collectively. The Court: Now talk to them collectively. Do you all want to testify? Defendant Welch: Yes, we do, I do.

The Court: All of you want to testify? (All defendants nodded in the affirmative).

The Court: You don't want to waive the privilege of not testifying? (All defendants responded in the negative).

[239] The Court: You know what you are doing? (All defendants nodded in the affirmative).

The Court: He's advised you that you have a right to testify or not to testify if you desire? (All defendants nodded in the affirmative).

Mr. Hall: I am in a position now where I am more or less muzzled as to any cross-examination. The Court: You have no right to cross-examine your own witness.

Mr. Hall: Or to examine them. The Court: You have a right to examine them, but you have no right to cross-examine them. The prosecuting attorney does that.

Mr. Hall: If one takes the stand, somebody needs to protect the other two's interest while that one is testifying, and I can't do that since I have talked to each one individually. [240] The Court: Well, you have talked to them, I assume, individually and collectively, too. They all say they want to testify. I think it's perfectly alright for them to testify if they want to, or not. It's their business.

Mr. Hall: Save my exceptions. The Court: You are overruled.

Mr. Hall: On a specific objection, which I have just enumerated. The Court: You are overruled. Each defendant said he wants to testify, and there will be no cross-examination of these witnesses, just a direct examination by you.

Mr. Hall: Your Honor, I can't even put them on direct examination because if I ask them—The Court: (Interposing) You can just put them on the stand and tell the Court that [241] you have advised them of their rights and they want to testify; then you tell the man to go ahead and relate what he wants to. That's all you need to do.

Mr. Hall: And instead of making any objections again out in the courtroom, I am making it right now, and this will be a continuing objection through each one of their testimony. The Court: Through each one's testimony, and you can remake it and I'll overrule it again.

\* \* \*

[245] KENNETH HOLLOWAY, a witness called by and on behalf of the Defendants, being first duly sworn, testified as follows:

# DIRECT EXAMINATION

By Mr. Hall:

Q. State your name, please, sir. A. Kenneth Holloway.

Q. Now, speak up so we can hear you down at this end. A. Kenneth Holloway.

Q. Mr. Holloway, you are the brother of Winston Holloway? A. Yes.

Q. Directing your attention to the last day of the month of June, or May, in the early morning hours of June the 1st, 1975, where were you? A. At home.

Q. Was anyone with you at home? A. My wife, and three children.

Q. Now, had you just had surgery or anything? A. Yes, sir. Approximately four weeks before I had a hernia repair and extensive surgery in my lower abdomen.

Q. Now, in addition to your wife and children, was anyone else present with you that night? A. Later that night there was.

Q. At what time later? [246] A. It was sometime after midnight. It was sometime after midnight, I was—and it was before one o'clock because I—it was that good enough, I was going to say I was watching t.v.

Q. Who was with you at that time? A. Well, my brother—I had been expecting him earlier in the day; but, that night, it was sometime after midnight that he really got there because of his car. He had car trouble.

Q. You say it was before one o'clock? A. Yes, sir.

Q. How long did he stay with you that night? A. At least two and a half hours. It seemed like that, a couple of hours.

Q. Now, you're positive that Winston Holloway was there with you? A. That's correct.

Q. Did you stay at home? A. That's right.

Q. Did you go anywhere? A. Well, I couldn't. I had hematoma set up in my side, and [247] my brother has medical training, and he was helping me cleaning the wound out.

Q. Was your wife and children in bed at that time? A. They were. They were upstairs. I live in a townhouse, and they were upstairs in bed.

Q. You live in a townhouse? A. A townhouse apartment, yes, sir. I had my bed downstairs because I couldn't go up and down the stairs because of my surgery.

Q. And your wife and children were upstairs, and you and your brother, Winston, were downstairs from one o'clock for approximately two and a half hours? A. A couple of hours at least.

Q. And you are positive on the date? A. I am positive, yes, sir.

Mr. Munson: I have no questions.

The Court: Call your next witness, Mr. Hall.

Mr. Hall: At this time, Your Honor, as I have explained to the Court, I am the court appointed counsel for all three defendants. I have explained to the defendants their [248] right to testify or not to testify, and I have made my motions in Chambers previous to this, and each of the defendants state that they wish to testify. Now, I, being their counsel and talking with each one separately, I feel that I am more or less muzzled as to asking them questions or cross-examining—

The Court: (Interposing) Well, let's don't make a speech.

Mr. Hall: But I want my objections made in the record.

The Court: Your objections have already been made, and your exceptions have already been saved. Call your next witness.

Mr. Hall: Well, Your Honor, I can't direct examine them, but—Mr. Holloway, you want to testify first?



[249] WINSTON M. HOLLOWAY, having been called as a witness in his own behalf and after being duly sworn, was examined and testified on oath as follows:

The Court: You are fully aware that you don't have to testify if you don't want to? Defendant Holloway: Yes, sir.

The Court: You are going to take the stand? Defendant Holloway: Yes, sir.

Mr. Hall: If the Court please, I cannot ask any direct questions, it being detrimental to the other two defendants.

The Court: Go ahead and examine this witness.

Mr. Hall: May I put that in the record, over my objections?

The Court: Yes, sir.

By Mr. Hall:

[250] Q. Mr. Holloway, you have heard the testimony in this case so far? A. Yes, sir.

Q. And you have a statement to make? A. Yes, sir, I do.

Q. Would you give your statement to the jury; and, as I have said, I can't ask you too many questions. You state to the jury in your own words what you know about this case, if anything? A. I know nothing about this case. As my brother stated, I was—I came into Little Rock from Stuttgart. My car broke down on the highway, and a highway patrolman—The Court: (Interposing) Don't talk so fast. A. (Continuing) I was forced from Keo, Arkansas, to hitchhike back into Little Rock, and the purpose was to come in and help my brother. I got into Little Rock and being without an automobile—I frequently drive a cab part-time to supplement my income—I checked the cab out at the cab company and went to a motel in North Little Rock and spent some time with some people there and left about—

Q. (Interposing) Speak a little louder. A. I checked a cab out from the cab company, and I went to North Little Rock to a motel and spent some time with some

people there. I left there about twelve or twelve-thirty and went to my brother's house. And, as he stated, he had previous surgery for a hernia and had developed a hematoma, which is a blood clot, and required frequent dressing changes. He did not stay in the hospital for this. He stayed at home, and that's why I came and helped him. I had had surgical experience in the military. I stayed there until between two and three o'clock and went to another motel on East Broadway where my dispatcher was trying to find another cab driver. I told him where he was; he was in a room with a girl there. And this covers the time during this crime. I at no time was in the place that night; I did not rape anyone; and I did not put a gun on anybody.

The Court: Is that what you want to say?

Defendant Holloway: Yes, sir.

The Court: You may cross-examine him, Mr. Munson.

#### CROSS EXAMINATION

By Mr. Munson:

Q. You say you checked a cab out that night, Mr. Holloway? A. Yes, sir, I sure did.

Q. What time of night did you check this cab out? [252] A. I'm not really—I can't be definitely sure. I say—

Q. (Interposing) What kind of cab was it? A. A Yellow Cab.

Q. You drive for them occasionally; is that correct? A. Occasionally, yes.

Q. Where did you get your chauffeur's license? A. State of Arkansas; here in Little Rock.

Q. Did you apply at the revenue department? A. Yes, sir.

Q. Did you prepare an affidavit at the revenue department to obtain this license? A. Yes, sir.

Q. What did this affidavit ask you? A. It asked if I had any prior convictions.

Q. And did you tell them? A. Yes, sir.

Q. How many, Mr. Holloway? A. Sir:



Q. How many? A. I didn't specify.

Q. Will you tell the jury about it? A. Is this necessary?

Mr. Hall: I object.

Q. (Mr. Munson, Continuing) Go ahead, Mr. Holloway. A. Yes, sir, I have had over three prior convictions.

[253] Q. Will you tell the jury what they were? A. Burglary and jail break.

Q. Anyone hurt in the jail break? A. Supposedly.

Mr. Hall: Objection.

Q. (Mr. Munson, Continuing) Mr. Holloway, there were five witnesses that got on the stand in this Court yesterday. Did you know any of those five? A: I have seen several of them occasionally.

Q. Where had you seen them? A. At the Leather Bottle.

Q. As a driver for a cab company, you take people out there; is that right? A. Occasionally.

Q. So, you knew about the Leather Bottle and its lay-out, didn't you? A. I certainly did. I have ate there several times.

Q. And obviously, whoever came in and robbed that place knew the lay-out, didn't they? A. I have never been in the back of the place. Cab drivers do not normally go through the back doors.

Q. Well, can you explain to the jury—out of the three people sitting over there, everyone of them positively identified you. Now, how did they all make that mistake? A. That wasn't a mistake. I was a very deliberate lie.

[254] RAY LEE WELCH, having been called as a witness in his own behalf and after being duly sworn, was examined and testified on oath as follows:

The Court: You know you don't have to testify if you don't want to; you understand that, and you are waiving that privilege and going to testify? Defendant Welch: Yes, sir.

The Court: Against your counsel's advice? Defendant Welch: Yes, sir.

The Court: Proceed.

## DIRECT EXAMINATION

[255] By Mr. Hall:

Q. Mr. Welch, you stated to me that you wish to testify? A. That's right.

Q. You understand that I represent the two co-defendants? A. Yes.

Q. That are charged with you? A. Yes.

Q. I cannot ask you any questions that might tend to incriminate any one of the three of you, but you wished to testify and I have advised you of your rights? A. Yes.

Q. Now, the only thing I can say is tell these ladies and gentlemen of the jury what you know about this case, if anything, and speak up so we can hear way out here. A. The only thing I know about the case is what the police told me, what I have been charged with. I don't have any kind of speech ready for the jury or anything. I thought I was going to be questioned.

Q. You don't know anything about what went on out there that night? A. No, I don't.

Q. Were you there? A. No, I wasn't there.

Defendant Holloway: Your Honor, are we allowed to make an objection?

[256] The Court: No, sir. Your counsel will take care of any objections.

Mr. Hall: Your Honor, that is what I am trying to say. I can't cross-examine them.

The Court: You proceed like I tell you to, Mr. Hall. You have no right to cross-examine your own witnesses anyhow.

Q. (Mr. Hall, Continuing) You were not present on the night or on the morning of June the 1st? A. That's right.

Q. Do you know anything of what went on out there that night of your own knowledge? A. No, not of my own knowledge; only what the police told me.

Mr. Hall: That's all.

## CROSS EXAMINATION

By Mr. Munson:

Q. Well, if you don't know anything about it, Mr. Welch, will you tell the jury where you were that night?  
A. Yes. I was at my room.

Q. Where? A. I was at home.

[257] Q. By yourself? A. No. My brother was with me.

Q. Gary Don Campbell? A. Yes.

Q. Well, would you explain to the jury why two people, Robin Henry and Don Henry, positively identified you as being one of the robbers that night? Had you ever seen them before? A. No, I haven't.

Q. Would they have any reason to come into this court and lie about you? A. I can't think of any, but they did make mistakes. They made a mistake on the other line-up.

Q. What line-up? A. The one where they identified another man.

Q. But you have no explanation why these two people would come into this Courtroom and positively identify you as one of the assailants? A. No, I don't. I don't have any idea unless the police told them to say that. They have been schooled.

GARY DON CAMPBELL, having been called as a witness in his own behalf and after being duly sworn, was examined and testified on oath as follows:

The Court: You know you don't have to testify unless you want to? Defendant Campbell: Yes, sir.

The Court: You want to testify, over your attorney's objection? Defendant Campbell: Yes, sir.

The Court: Proceed.

Defendant Campbell: Ladies and gentlemen, I just want to make this brief.

The Court: Wait a minute. Speak a little slower so the jury can understand what you're saying.

## DIRECT EXAMINATION

[259] By Mr. Hall:

Q. Gary, speak up so this gentleman can hear and this gentleman up here can hear you. Your name is Gary Don Campbell? A. Yes, sir.

Q. And you are the defendant in the case that's charged here? A. Yes, sir.

Q. Now, Mr. Campbell, on the night or the early morning of June the 1st, were you in the Leather Bottle? A. No, sir.

Q. You have heard these witnesses, two of them, identify you? A. Yes, sir.

Q. Were you there in the Leather Bottle that morning, June the 1st? A. No, sir. I have never been to that place.

Q. Never been to the Leather Bottle? A. Never have.

Q. You have heard to two officers get up here and testify that you made a statement to them admitting you were there that morning along with the other two defendants? A. Yes, sir, I heard them say that.

Q. Did you make that statement? A. No, sir, I didn't.

[260] Q. Did you sign the rights form that they gave you? A. I didn't sign anything.

Q. What were you in jail for at the time? A. I was in there for drunk, and I was under the influence of narcotics at the time.

Q. Had you taken drugs that day? A. Yes, sir.

Q. And you heard the officer testify that you registered point sixteen on the breathalyzer? A. Yes, sir.

Q. How long had you been in jail when they brought you upstairs to question you? A. I had just got there. I would say I had been there about thirty minutes.

Q. Now, you deny making the statement that they said you did? A. Yes, sir.

Q. Did you make an oral statement to them? A. No, sir.

Q. Now, Ray Welch is your half-brother; is that right? A. Yes, sir.

Q. Did you know Winston Holloway at that time? A. I didn't even know the man. I had seen him.

Q. Did you know his name? A. I didn't know his name.

[261] Q. If you didn't know his name, you couldn't put his name on this oral statement; is that right? A. I could not put his name because I didn't know it.

### CROSS EXAMINATION

By Mr. Munson.

Q. What were you in jail for, Mr. Campbell, when the officers came down and advised you of your rights?

A. I was in there for being drunk, public drunk.

Q. And what name were you using at that time? A. Robert Hill.

Q. Why? A. Just an alias.

Q. Why do you use aliases, Mr. Campbell? A. I don't know.

Q. Sir? A. I don't know. I just go by an alias sometime. I like the name "Robert Hill" better than my own name.

Q. How long have you had this new haircut? A. I got it over at the county jail because my hair was real long and I didn't have any shampoo and my dandruff was getting bad, and it was hot over there, and I didn't have no way to take care of it so I cut it.

Q. You didn't do that to confuse the witnesses, did you? A. No, sir.

[262] Q. Do you know David Carroll and Mary McKimmey? A. No, sir.

Q. The two people that testified yesterday, the blonde girl with the glasses and the tall man with black hair?

A. No.

Q. You don't know them? A. No, sir.

Q. Never seen them before? A. Never seen them before.

Q. Why would they come in this Courtroom and positively identify you? A. They are mistaken.

Q. They are mistaken in their identity? A. Yes, sir.

Q. Is it not true, Mr. Campbell, that you are guilty of burglary for which you spent five years in the Arkansas State Penitentiary? A. No, sir. I'm not guilty for burglary which I spent five years; I'm guilty for burglary which I spent three months.

Q. On March 26, 1974? Somewhere around there.

\* \* \* \*

Opinion of Arkansas Supreme Court

Filed July 19, 1976 \_\_\_\_\_ (Pet. App. A)

Judgment of Arkansas Supreme Court

Filed September 20, 1976 \_\_\_\_\_ (Pet. App. B)



SUPREME COURT OF THE UNITED STATES

No. 76-5856

WINSTON M. HOLLOWAY, ET AL., PETITIONERS

v.

ARKANSAS

On PETITION FOR WRIT OF CERTIORARI TO the Supreme Court of the State of Arkansas.

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted, limited to question 1 presented by the petition.

April 18, 1977